



WEB COPY

C.R.P. (PD) .No.3589 of 2016



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).No.3589 of 2016
and C.M.P.No.18292 of 2016

1.Lakshmanan
2.Thangayee
3.Srinivasan
4.Gunasekaran

.. Petitioners

Vs.

Vikramadithan @ Senkottaiyan

.. Respondent

Prayer: This Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 06.06.2016 made in I.A.No.279 of 2013 in O.S.No.321 of 2012 on the file of the District Munsif Court, Sankari.

For Petitioners : Mr.G.Vinoth for
Mr.N.Umapathi

For Respondent : Mr.R.Ezhilarasan



ORDER

WEB COPY

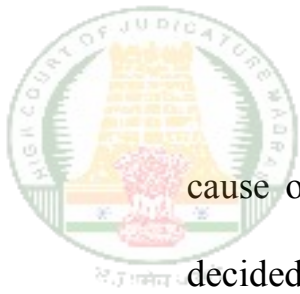
This Civil Revision Petition is filed against the fair and decreetal order dated 06.06.2016 made in I.A.No.279 of 2013 in O.S.No.321 of 2012 on the file of the District Munsif Court, Sankari.

2.The petitioners are the defendants and respondent is the plaintiff in O.S.No.321 of 2012 on the file of the District Munsif Court, Sankari. The respondent has filed the said suit for permanent injunction restraining the petitioners from interfering with his peaceful possession and enjoyment of the suit properties except due process of law. In the said suit, the petitioners have filed I.A.No.279 of 2013 under Order VII Rule 11 and Section 151 of CPC, to reject the plaint on the ground that the present suit is hit by principles of res-judicata and abuse of process of Court. According to the petitioners, they have filed O.S.No.215 of 1998, on the file of the District Munsif Court, Sankari, against the respondent and four others in respect of the suit properties and other properties, seeking relief of permanent injunction and the said suit was decreed by the judgment and decree dated 21.01.2003. The said decree is still in force and therefore, the present suit is not maintainable and prayed for rejection of plaint.



WEB COPY

3.The respondent filed counter affidavit and submitted that O.S.No.215 of 1998 filed by the petitioners was dismissed for default on 03.07.2001 and the respondent was informed that there is a delay in filing the petition to restore the suit and hence, the suit will not be restored. Believing that, the respondent did not contact his Advocate and went to other State for his work. Only after receiving notice in A.R.D.26 of 2010, filed by the respondent for return of documents, the respondent came to know the ex-parte decree passed in the said suit and filed I.A.No.1307 of 2012 to set aside the exparte decree. In the said I.A, the respondent's evidence was closed and evidence on behalf of the petitioners in the I.A was closed as the petitioners were not ready to let in evidence. The said I.A was pending enquiry. The respondent further stated that the petitioners 1 and 2 have entered into an agreement of sale dated 07.01.1998 with the respondent to sell the suit properties for the total sale consideration of Rs.2,15,000/-, received a sum of Rs.2,00,000/- as an advance and handed over possession of the suit properties on the same day to the respondent. From that date, the respondent is cultivating the properties and he is in possession and enjoyment of the suit properties. The petitioners and others in the year 2012, tried to interfere with the possession of the respondent. Therefore, the respondent filed suit in O.S.No.321 of 2012. The



cause of action for both the suits are different, O.S.No.215 of 1998 is not decided on merits, it is only an exparte decree and prayed for dismissal of I.A.No.279 of 2013, filed by the petitioners.

4.Before the learned Judge, the petitioners marked the Judgment dated 21.01.2003 in O.S.No.215 of 1998 as Ex.P1. The respondent did not let in any oral and documentary evidence.

5. The learned Judge considering the averments made in the plaint, documents filed along with the plaint, affidavit and counter affidavit, dismissed the application.

6.Against the said order of dismissal dated 06.06.2016 made in I.A.No.279 of 2013 in O.S.No.321 of 2012, the petitioners have come out with the present Civil Revision Petition.

7.The learned counsel appearing for the petitioners submitted that the suit filed by the respondent is abuse of process of Court. The issue involved in the present suit has already been adjudicated before the Court of law and an order of interim injunction was granted in the earlier suit in O.S.No.215 of



1998 against the respondent and in view of the same, the present suit is barred by principles of res-judicata. The learned Judge erred in holding that the property in Survey No.29/2, the 3rd item of the suit property was not involved in the earlier suit and the cause of action for the present suit is different, whereas the respondent himself has admitted that the cause of action arose in the year 1998. The learned Judge erred in dismissing the application on the ground that the decree in the earlier suit is not a contested decree and it is only an exparte decree. There must be some finality in the proceedings in respect of the same issue between the same parties. The learned Judge erred in holding that the issue of res-judicata will be decided only after taking evidence and the order of the learned Judge is erroneous and prayed for setting aside the order of the learned Judge and rejection of plaint.

8.The learned counsel appearing for the respondent made submissions in support of the order of the learned Judge and prayed for dismissal of the Civil Revision Petition.

9.Heard the learned counsel for the petitioners, who is appearing before this Court physically as well as the learned counsel appearing for the respondent through video conferencing/Hybrid mode and perused the entire materials available on record.



WEB COPY

10. From the materials available on record, it is seen that the respondent filed the suit for injunction against the petitioners in respect of four items of properties mentioned in the plaint. The petitioners filed the present I.A under Order VII Rule 11 of CPC on the ground that the suit is hit by principles of res-judicata. According to the petitioners, they have also filed O.S.No.215 of 1998 against the respondent and four others in respect of the suit properties for permanent injunction. The said suit was decreed on 21.01.2003. In view of the same, the present suit is hit by principles of res-judicata. To decide the issue of res-judicata, the Court has to consider whether the suit or issue was directly and substantially in issue in the former suit between the same parties or parties under whom, the present plaintiff claim under the same title. To decide the issue, the plaint in the earlier suit must be filed. From the materials on record, it is seen that the petitioners have not filed plaint in the earlier suit. They have filed the judgment and decree dated 21.01.2003 in O.S.No.215 of 1998. Even before this Court, the petitioners have not filed the plaint in the earlier suit. It is the contention of the respondent that as per the agreement of sale dated 07.01.1998, the petitioners have handed over the possession of the suit properties to the respondent on 07.01.1998 itself, the respondent is cultivating the suit



properties and he is in possession and enjoyment of the suit properties.

According to the respondent, on 11.09.2012, the petitioners tried to interfere with his possession and enjoyment of the suit properties. A reading of cause of action paragraph shows that when the petitioners have given complaint to the Police and on 10.09.2012, the respondent's complaint to the Inspector of Police, Magudanchavadi and his Superior Officers. Further, the property mentioned as item No. 3 in the present suit was not subject matter in the earlier suit. The learned Judge considering the materials placed before him, has come to the conclusion that cause of action for both the suits are different, the 3rd item of the suit properties was not subject matter in the earlier suit and hence, the issues involved in both the suits are not one and the same. The petitioners filed judgment and decree dated 21.01.2003 made in O.S.No.215 of 1998. In the said suit, apart from the respondent, there are four other defendants and the properties are also different. The order of the learned Judge dismissing I.A.No.279 of 2013 in O.S.No.321 of 2012 is valid and there is no error or irregularity in the said order of the learned Judge warranting interference by this Court.



11.For the above reasons, this Civil Revision Petition is dismissed.

Consequently, the connected Miscellaneous Petition is closed. No costs.

23.11.2021

vkf

Index : Yes / No

Internet : Yes / No

To

The District Munsif Judge,
Sankagiri.



WEB COPY



C.R.P. (PD) .No.3589 of 2016

V.M.VELUMANI, J.

vkf

C.R.P.(PD).No.3589 of 2016
and C.M.P.No.18292 of 2016

23.11.2021